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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

LISA GONZALEZ,

Plaintiff and Appellant,

v.

COUNTY OF SAN JOAQUIN et al.,

Defendants and Respondents.

C067371

(Super. Ct. No.
39200900212155CUWTSTK)

Plaintiff Lisa Gonzalez worked as a paralegal at the San Joaquin County Superior Court (San Joaquin) beginning in 2000. In 2008 San Joaquin terminated Gonzalez's employment. The parties disagree vehemently over what led to the termination. Gonzalez claims that after back problems caused her to request a medical/disability leave, San Joaquin abruptly terminated her. San Joaquin contends it terminated Gonzalez because of performance and attitude problems.

Gonzalez filed suit against San Joaquin, alleging physical disability discrimination, failure to reasonably accommodate,

failure to engage in an accommodation process, and violation of the Moore-Brown-Roberti Family Rights Act, more commonly known as the California Family Rights Act of 1993 (CFRA; Gov. Code, § 12945.2). Both parties filed motions for summary judgment.

The trial court granted San Joaquin's summary judgment motion. Gonzalez appeals, arguing the court erred in granting San Joaquin's motion and denying hers. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The parties agree on the following facts. San Joaquin hired Gonzalez in November 2000 as a part time, temporary paralegal in its family law pro per clinic. In February 2004 grant funding for the program she was working in ended and Gonzalez was let go. San Joaquin rehired Gonzalez as a full time, grant-funded paralegal under a limited-term employment agreement in July 2005. Here, agreement ends and each party presents a very different scenario of events leading up to Gonzalez's termination.

Gonzalez's Version

In 2005 Gonzalez developed a back problem diagnosed as advanced disc space collapse and degenerative disc disease. From 2005 through May 2008 this condition worsened, causing Gonzalez pain and limiting her ability to sit, stand, walk, bend, sleep, and work. Gonzalez contends her disability was both documented by health professionals and known to her employers.

In early 2008 Gonzalez's back condition intensified. On May 13, 2008, Gonzalez requested a two month medical/disability leave of absence for back surgery. San Joaquin immediately terminated Gonzalez's employment.

During her seven-year employment with San Joaquin, Gonzalez never received any "individualized, written documentation which negatively criticized her job performance." Gonzalez's supervisor and the human resources manager both authored chronologies that revealed Gonzalez requested medical leave prior to her termination.

San Joaquin's Version

Gonzalez's supervisor, Sheila Ballin, personally observed and heard from others that Gonzalez frequently arrived at work late, took long lunches, and left early. Ballin also received complaints from customers and other staff about Gonzalez's performance. In addition, Gonzalez frequently clashed with a fellow paralegal.

In early 2008 Ballin became aware of a conflict between Gonzalez and a family support clerk, Jenny Rodriguez. At one point, Gonzalez caused Rodriguez to break down in tears. Ballin, who considered terminating Gonzalez after the incident, contacted human resources manager Denise Hill. Hill told Ballin that under Gonzalez's employment agreement, she could be terminated with five days' notice. Ballin decided not to terminate Gonzalez.

On May 13, 2008, Gonzalez contacted Sharon Morris, assistant court executive officer, and asked if she could have

two months off. Morris told Gonzalez she would need to discuss her request with Ballin, her supervisor.

Gonzalez informed Ballin she needed a two month personal leave of absence because her "life was a mess and she needed to take care of things." Gonzalez also mentioned her pending divorce. Ballin responded that two months was too long, but she would check with human resources to see how much time Gonzalez had accrued and report back.

According to Ballin, Gonzalez acted aggressively and confrontationally when she asked for leave. Gonzalez told Ballin that if she had to she would just quit. Gonzalez's confrontational attitude was the "straw that broke the camel's back," and Ballin decided to terminate her. Ballin told Hill, the human resources manager, that she was requesting Gonzalez's termination based on her history of attendance and attitude problems, including the aggressive, confrontational way she had requested leave.

Ballin requested a five-day termination notice from human resources but did not immediately inform Gonzalez of the decision to terminate her. Ballin informed Gonzalez of her accrued leave time. Gonzalez appeared dissatisfied with the amount of leave available.

Gonzalez told Randi Bell, a law firm paralegal who was often at the courthouse, that she was taking two months off because she was "overwhelmed and needed time to figure things out." After Gonzalez spoke to Bell again shortly after she was told she could not take two months' leave, Bell said that if her

reason for the leave were medical they would have to give her the time off. Gonzalez suddenly said something like "'It's medical.'" Bell thought Gonzalez was joking. On a prior occasion, Gonzalez told Bell that her back had never been better.

Gonzalez then told Ballin she was requesting leave for medical reasons. Ballin responded that Gonzalez never previously informed her that the leave was medical.

Gonzalez met with Hill and told her Ballin had denied her leave request. Gonzalez referred to back surgery, but confirmed she had not scheduled such surgery. Nor did Gonzalez have any medical verification for her leave request.

Hill responded that she understood Gonzalez's request was personal, not medical, and that there must have been a misunderstanding. Hill did not believe Gonzalez was requesting leave for medical reasons. To the contrary, Hill thought Gonzalez had fabricated the medical claim because she did not have enough accrued leave to take two months off. Hill did not then inform Gonzalez of the decision to terminate her, though she knew that Ballin had initiated the termination process. That responsibility rested with Ballin, who informed Gonzalez later that day that she was being terminated, effective five days after the notification.

After being informed of her termination, Gonzalez did not report to work for the remainder of the five-day period. Gonzalez submitted a physician's note stating that she would not

be at work from May 13 through May 16, but could return to work on May 18 without restriction.

In the five months prior to her leave request, Gonzalez had not discussed issues related to her back with any of her doctors. Nor did she submit any medical certification regarding her back injury or schedule back surgery.

During Gonzalez's employment with San Joaquin, there was no indication of any disability; San Joaquin employees did not observe any disability and Gonzalez never informed them she was disabled. Nor did Gonzalez ever inform Ballin of any back disability or disability of any kind. Hill was similarly unaware of any disability.

Ballin was aware that Gonzalez engaged in physical activities that she did not associate with someone suffering from a back condition. Ballin and Gonzalez took golf lessons together. Gonzalez also played tennis, danced, bowled, took walks, did her own housework and gardening, and took yoga classes. Gonzalez discussed these activities with her coworkers and with Ballin. At Christmas time, Gonzalez climbed up on a desk to hang Christmas decorations.

Gonzalez missed no more than five days of work due to her alleged back injury. However, Gonzalez never told Ballin of the reason for her absences or provided any medical verification of her condition.

Ballin knew Gonzalez had a "handicap placard" for her car, but she did not believe it was for a back condition. Instead, Ballin believed Gonzalez was claustrophobic, but not that she

had a physical disability. Gonzalez did not recall whether she ever informed anyone at work of the reason for the placard.

Hearing on the Motion

At the hearing on the summary judgment motion, the trial court began by stating it believed that, under the undisputed facts, the decision to terminate Gonzalez was based on many factors, including her request for two months' personal leave, but not on a request for medical leave. The court asked Gonzalez's counsel for evidence that the decision was based on her request for medical leave or her disability.

Gonzalez's counsel referenced the chronology written by Hill, arguing the document supported Gonzalez's claim that the termination resulted from her medical leave request. The trial court acknowledged that the statement "does create some ambiguity."

After reviewing the chronology, the trial court determined: "I don't believe that this still goes to anything as to when was the termination decision made, and that's where Ms. Ballin's statement is clear, that she made the termination decision before any of this discussion about medical leave. [¶] And this doesn't undercut that. It does not have to be that your client knows that they've made the decision. It just has to be when was the decision made."

The trial court also asked Gonzalez's counsel, "why didn't you in deposition ask Ms. Hill point blank what was her understanding or what facts does she know as to when was the decision made by Ms. Ballin?" The court also rejected

Gonzalez's counsel's description of Hill's and Ballin's declarations as "self-serving." The court noted the declarations were under oath and provided detailed discussions of the timing of the termination, establishing that Ballin terminated Gonzalez following her request for personal, not medical, leave.

Ruling on the Summary Judgment Motions

In granting San Joaquin's summary judgment motion, the trial court found: "Plaintiff has not met her prima facie burden of proving that her termination was because of her alleged disability or serious health condition. [Citations.] The undisputed evidence shows that the termination decision was made before Defendants were aware of any requested leave based on a 'disability.' [Citations.] The fact that Plaintiff's supervisor knew that Plaintiff used a handicap placard and had an 'achy back' is not sufficient notice to the employer of a 'disability' that needs a certain accommodation, here a two-month leave. Defendants are not responsible for reading Plaintiff's mind. Here, Plaintiff did not request a leave of absence for disability-related reasons -- only personal ones -- and a decision to terminate Plaintiff was made prior to any disclosure of a purported 'disability.' [Citation.]"

Following entry of judgment, Gonzalez filed a timely notice of appeal.

DISCUSSION

Standard of Review

A motion for summary judgment must be granted if the submitted papers show there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 844.) The moving party, whether plaintiff or defendant, initially bears the burden of making a "prima facie showing of the nonexistence of any genuine issue of material fact." (*Id.* at p. 845.) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Id.* at p. 851.) "Thus, if a plaintiff who would bear the burden of proof by a preponderance of evidence at trial moves for summary judgment, he must present evidence that would require a reasonable trier of fact to find any underlying material fact more likely than not—otherwise, he would not be entitled to judgment as a matter of law, but would have to present his evidence to a trier of fact." (*Ibid.*, italics omitted.) Once the moving party has met its burden, the burden shifts to the opposing party to show the existence of a triable issue of material fact. (Code Civ. Proc., § 437c, subds. (c), (p) (2).)

We review de novo the record and the determination of the trial court. First, we identify the issues raised by the pleadings, since it is these allegations to which the motion must respond. Second, we determine whether the moving party's showing has established facts negating the opponent's claims and

justifying a judgment in the moving party's favor. When a summary judgment motion prima facie justifies a judgment, the final step is to determine whether the opposition demonstrates the existence of a triable issue of material fact. (*Barclay v. Jesse M. Lange Distributor, Inc.* (2005) 129 Cal.App.4th 281, 290.)

When an employee alleges employment discrimination, the employee must first establish a prima facie case of discrimination. The employer can then rebut the employee's claim by offering a legitimate, nondiscriminatory reason for its employment decision. In order to prevail, the employee must show that the employee's proffered reason is pretextual. (*McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, [36 L.Ed.2d 668].)

The employee bears the burden of persuading the trier of fact that the employer engaged in intentional discrimination. The ultimate question is whether the employer intentionally discriminated, and evidence that the employer's proffered reason is unpersuasive or contrived does not necessarily establish that the employee's proffered reason for termination is correct. Instead, the trier of fact must believe the employee's explanation of intentional discrimination, not merely doubt the employer's explanation. (*Arteaga v. Brink's, Inc.* (2008) 163 Cal.App.4th 327, 342-343 (*Arteaga*).)

In other words, the employee will not prevail by simply showing the employer's decision was wrong or mistaken, since the factual dispute is over whether discriminatory animus motivated

the employer, not whether the employee is wise, shrewd, prudent, or competent. Instead, the employee must demonstrate such weaknesses, implausibility, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its actions that a trier of fact could legitimately find them "'unworthy of credence'" and infer that the employer did not act for the asserted nondiscriminatory reason. (*Arteaga*, *supra*, 163 Cal.App.4th at pp. 342-343.)

Gonzalez claims San Joaquin terminated her employment because she requested time off for medical reasons. San Joaquin responded that it terminated Gonzalez for a variety of reasons prior to her request for time off for medical reasons. Thus, Gonzalez bears the burden of establishing that San Joaquin's stated reason for her termination is pretext, that, in fact, San Joaquin terminated her for requesting medical leave.

Key Question on Appeal: Timing of the Termination

The parties argue a variety of issues on appeal, but the pivotal question, on which all else rests, is simply this: when did Ballin decide to terminate Gonzalez, before or after Gonzalez requested medical leave based on her disability? Gonzalez must present evidence that the timing of her termination presents a triable issue of fact in order to withstand San Joaquin's summary judgment motion. Accordingly, we carefully review the evidence offered by both Gonzalez and San Joaquin.

Hill Chronology

Gonzalez relies primarily on a document titled "Chronology of Events – May 13, 2009 Noted by Denise Hill, Human Resources Manager."¹ The subject is "Lisa Gonazalez [sic], Paralegal (Contract)," and the document is unsigned.

Hill states that at 8:20 a.m. on May 13, 2008, Ballin called her and informed her Gonzalez would be coming to see Hill. Ballin stated Gonzalez had requested two months' leave to take care of some personal business, and Ballin told Gonzalez that she could not approve a two-month leave but would check with human resources to find out how much accrued time Gonzalez had. Ballin came to Hill's office and verified Gonzalez had two weeks of accrued time.

Ballin returned to her office, met with Gonzalez, and offered her two weeks of personal leave. Gonzalez became upset over the denial and asked if there was any other type of leave, like FMLA (Family Medical Leave Act) or disability. Ballin told Gonzalez she did not believe personal leave would qualify for FMLA or disability because it was not medical. Gonzalez responded, "'It's medical.'" Ballin expressed concern that Gonzalez had not indicated her leave request was medically related and referred her to human resources.

Gonzalez arrived at Hill's office around 9:00 a.m. the same day. Gonzalez told Hill she had asked Ballin for medical leave

¹ Although the chronology is dated May 13, 2009, the events in question occurred on May 13, 2008.

and was denied. Hill responded that she understood Gonzalez's request was for personal leave. Gonzalez said it was medical leave for back surgery. Hill told Gonzalez she needed to request a medical leave of absence and provide certification. Gonzalez indicated she had not yet scheduled the surgery and returned to Ballin's office.

The chronology continues: "Ms. Ballin called me before Ms. Gonzalez returned to her office and asked if she can terminate Ms. Gonzalez. (*NOTE: Ms. Ballin had been contemplating the termination of Ms. Gonzalez over a period of 3 months. Prior conversations between me and Ms. Ballin over a period of several months were discussions about Ms. Gonzalez's lack of professionalism and punctuality and other performance related issues.*) I expressed a concern about the timing of the termination because of the circumstances relating to Ms. Gonzalez's new request for medical leave. However, Ms. Ballin says that she has had enough of Ms. Gonzalez's unprofessional behavior and decided it would be best to terminate her. Rosa Junqueiro, Court Executive Officer was informed of the decision to terminate Ms. Gonzalez. Ms. Ballin prepared a notice of termination"

The chronology concludes with Gonzalez returning to Ballin's office. Gonzalez saw a letter addressed to her on Ballin's desk, picked it up, and opened it. Gonzalez asked, "'You're firing me?' Because I asked for time off?" Ballin suggested Gonzalez talk with human resources and stated she was not being fired because she asked for medical leave.

Hill's Deposition

Gonzalez also relies on portions of Hill's deposition testimony. Hill testified Gonzalez did not originally request medical leave, but later requested medical leave for back surgery. Hill told her she needed to provide medical certification to obtain medical leave.

Hill was asked if Gonzalez was given an opportunity to provide medical certification. Hill responded in the affirmative. Gonzalez's counsel then asked: "How was that if she was terminated literally minutes later?" Hill responded: "She was provided a five-day notice. She was still our employee for five days. And she took sick leave for those three days.

[¶] I told her, 'You need to provide a doctor's note,' at that point. I also told her, 'If you need to take time off for back surgery, you need to provide us medical certification.' [¶]

Q. Are you suggesting that after she was notified that she was terminated, if she had brought in some sort of doctor's note at that point, she would not have been terminated? [¶] A. No, that's not what I was suggesting. [¶] Q. What are you suggesting? [¶] A. I was simply telling her if she was requesting a medical leave, she needed to provide documentation for the request But she never asked for medical leave originally is my understanding."

Counsel also questioned Hill about the chronology, specifically her statement that ""I expressed a concern about the timing of the termination because of the circumstances relating to Ms. Gonzalez' new request for medical leave.""

When asked why she was concerned, Hill responded: "It was just a statement." Asked again about the reasons for her concern, Hill testified: "[I]t's just coming from human resources and medical leave, you know. We don't deny people medical leave, eligible employees requesting medical leave. So it was a comment I made." Hill also reiterated Gonzalez never requested medical leave from her.

Ballin's Deposition

Finally, Gonzalez cites portions of Ballin's deposition as evidence her termination followed her request for medical leave. Gonzalez's counsel asked, referring to Ballin's declaration:

"Do you not think that you wrote in your statement that she asked for time off for medical reasons or disability reasons?

[¶] A. She didn't ask me for medical time off. [¶] Q. Did you not write in your statement that she asked about FMLA? [¶]

A. That's written there, yes. [¶] Q. What does the acronym stand for? [¶] A. Family Medical Leave [¶] Q. And she asked you about disability, correct? [¶] A. Uh-huh."

Ballin went on to testify that when Gonzalez asked for time off she never mentioned disability, and only asked about FMLA and disability after Ballin decided to terminate her. Counsel asked: "Well, you didn't put in the statement that you had decided to terminate her before she asked about FMLA and disability, did you? [¶] A. That would be when I had the conversation where it says, 'you know the conversation.' [¶] Q. But you didn't put what the conversation was about, did you? [¶] A. Correct."

Ballin Declaration

In support of the summary judgment motion, San Joaquin relied on Ballin's declaration. Ballin stated that at 8:10 a.m. on May 13, 2008, Gonzalez came into her office. Gonzalez told Ballin she needed to take a personal leave of absence because "her life was a mess and she needed to take care of things." Gonzalez referred to her divorce and requested two months' leave. Ballin said that was too long, but she would check with human resources to see how much time she had "on the books."

Gonzalez noted Ballin had given leave to another employee in the past and "that if I wouldn't give her the leave she wanted, that she would just do what she had to do, and that if she had to, she would quit. She was very aggressive and confrontational in her demand for leave. She did not mention a back problem or any other medical basis for the leave request." Ballin told Gonzalez "there were different rules for different circumstances, but that I would check."

Ballin went to human resources, conferred with Hill, and found Gonzalez had accrued about two weeks' leave. Ballin told Hill she wanted to terminate Gonzalez's employment. Hill gave Ballin a template for a five-day termination notice, which human resources would process for Ballin's signature.

When Ballin returned to the office, she found Gonzalez in another employee's office along with Randi Bell, a paralegal from a private firm. Gonzalez asked Ballin about her meeting with Hill, and Ballin told Gonzalez she had two weeks' leave. Gonzalez responded that this was not enough and remained adamant

that she needed two months. Ballin told Gonzalez if she resigned she would lose medical benefits. Gonzalez then asked if there were any other alternatives like disability or FMLA.

When Ballin said she did not know the rules about this, Bell said something like "then you would need to claim the reason is medical." Gonzalez then stated her request was medical, and Ballin pointed out that she had not said anything about medical leave earlier and that personal leave would not qualify for FMLA. Gonzalez insisted her request was medical, and Ballin told her she needed to consult with human resources. Gonzalez left the office.

Ballin called Hill and told her Gonzalez was now claiming she needed medical leave. Ballin believed the claim was fabricated. Ballin later picked up a termination letter in the human resources office, and Hill raised the issue of Gonzalez trying to make an issue out of the timing of her termination.²

According to Ballin, at the time she made the decision to terminate Gonzalez, Gonzalez had never mentioned any request for medical leave. Gonzalez's later claim that she was requesting time off for medical reasons played no role in Ballin's decision to terminate her employment.

Hill's Declaration

In her declaration in support of the motion for summary judgment, Hill recounts that on the morning in question, Ballin

² Ballin also authored a chronology that largely comports with her declaration.

informed her Gonzalez had asked for personal leave and Ballin needed to know how much she had accrued. Ballin stated Gonzalez requested the leave in an aggressive, confrontational manner and "she was just fed up with her and wanted to terminate her." Hill advised San Joaquin's executive officer of the decision to terminate Gonzalez.

When Gonzalez later came to Hill's office, she told Hill her leave request was based, in part, on her medical condition and mentioned back surgery. According to Hill: "At the point in time that Ms. Gonzalez came to see me, I already knew that Ms. Ballin had initiated the process for notifying Ms. Gonzalez that she was being terminated. I did not feel it was appropriate to advise Ms. Gonzalez at that time that she was already being terminated."

Hill acknowledged that sometime during the day, in the context of discussing Gonzalez's termination, she discussed the timing of the decision and how Gonzalez could question the timing. Hill stated: "However, I did not believe the decision to terminate her was illegal. I did not believe that Ms. Ballin was in any way motivated to initiate the termination based on a request for medical leave, but rather was motivated by a history of past problems, combined with Ms. Gonzalez's aggressive and confrontational manner that morning."

Analysis

As the trial court aptly observed during oral argument, both parties briefed numerous issues, including whether or not Gonzalez was disabled, "but the issue under the law is really a

very simple issue. At the time the decision was made to terminate, was it made based upon a request for disability leave . . . medical leave?" Our review of the evidence supports the trial court's determination that Gonzalez did not request a leave of absence for disability-related reasons, but for personal reasons, and the decision was made prior to any disclosure of a disability.

However, Gonzalez asserts San Joaquin "admittedly terminated Plaintiff the very moment she asked for time off because of her back condition. The Defendants further acknowledged that they did not intend to terminate Plaintiff until she asked for two months off because of her back condition." Therefore, since "direct evidence" of San Joaquin's discriminatory reason for terminating Gonzalez existed, San Joaquin cannot offer any other reasons for the termination and summary judgment should be granted in favor of Gonzalez.

In support, Gonzalez cites to Hill's chronology and selected passages of Ballin's deposition. As for Hill's and Ballin's declarations, Gonzalez labels them "self-serving" and "unreliable." We must disregard the declarations, Gonzalez contends, because a party cannot create an issue of fact by a declaration that contradicts his prior discovery responses. (*Benavidez v. San Jose Police Dept.* (1999) 71 Cal.App.4th 853, 860.)

In effect, Gonzalez argues the Hill chronology trumps the declarations of Hill and Ballin. However, Gonzalez provides no information as to the circumstances under which the chronology

was written. The chronology itself provides no clue as to when or why Hill wrote down her thoughts. Nor is the chronology signed.

Although Gonzalez strives mightily to present the chronology as positively establishing the sequence of events, we share the trial court's finding that the chronology is ambiguous. Hill's chronology does not establish *when* Ballin made the decision to terminate Gonzalez; Hill merely sets down the sequence of events, many of which she did not personally experience. Much of the chronology recounts what Ballin and Gonzalez told Hill, not what Hill observed.

Gonzalez stresses Hill's statement that she "expressed a concern about the timing of the termination because of the circumstances relating to Ms. Gonzalez's new request for medical leave." Again, Hill's concern casts no light on the timing of Ballin's decision to terminate Gonzalez. Nothing in the chronology establishes the timing of Ballin's decision.

Nor do the depositions of Hill and Ballin undercut the sequence of events outlined in their declarations. Although Gonzalez seeks to highlight only portions of the depositions supportive of her claim that she was terminated "immediately" after requesting medical leave, the depositions when read in their entirety do not support this assertion. Ballin reiterated that she made her decision to terminate prior to Gonzalez's claim that her leave request was medical.

In addition, Gonzalez's own deposition does not further her claim that she was terminated after requesting medical leave.

Gonzalez was asked, "Are you sure you used the word 'medical' during the conversation? [¶] A. I think I did. I'm not sure, but I think I did. [¶] Q. But you're not sure? [¶] A. Correct. [¶] Q. Do you remember telling Sheila [Ballin] that your life was falling apart? [¶] A. I don't remember if I said that. [¶] Q. It is possible . . . you did say that? [¶] A. I'm not sure. [¶] Q. Was your life falling apart? [¶] A. You know, I have issues." Later in the deposition, Gonzalez was asked: "So you don't have a specific recollection of mentioning any particular medical issue? [¶] A. No. [Ballin] didn't ask. She didn't ask me what I needed time off for."

In contrast, Ballin's declaration unambiguously states, under oath, that after Gonzalez's original request for leave for personal reasons, the employee became aggressive and confrontational. Based on Gonzalez's reaction and prior problems with her performance, Ballin decided to terminate her. Ballin unequivocally states Gonzalez's later claim that she was requesting medical leave "played no role in my decision to recommend termination of her employment."

Hill's declaration corroborates Ballin's version of events. Ballin announced her decision to terminate Gonzalez after she became confrontational when Ballin denied her request for two months' leave. According to Hill, "I did not believe that Ms. Ballin was in any way motivated to initiate the termination based on a request for medical leave, but rather was motivated

by a history of past problems, combined with Ms. Gonzalez's aggressive and confrontational manner that morning."

We do not find these declarations untrustworthy or self-serving. Nor do we find they contradict earlier statements made in discovery, since Hill's chronology does not establish when Ballin decided to terminate Gonzalez.

All of Gonzalez's alleged causes of action against San Joaquin—physical disability discrimination, failure to reasonably accommodate, failure to engage in interactive process, and violation of the CFRA—depend on a finding that San Joaquin terminated Gonzalez based on her disability. Since Gonzalez cannot establish a triable issue of fact as to the reason for her termination, the trial court did not err in granting summary judgment in favor of San Joaquin.

DISPOSITION

The judgment is affirmed. Defendant San Joaquin shall recover costs on appeal.

RAYE, P. J.

We concur:

ROBIE, J.

HOCH, J.